

MONTGOMERY COUNTY ETHICS COMMISSION

ADVISORY OPINION/WAIVER

JUNE 19, 2000

An employee [,] who is retiring [,] HAS requested permission to accept CERTAIN AFTER-COUNTY employment [with a new company which is owned by a current County contractor who is a relative of the employee. The employee also requested permission] AND to market [this company's] HIS NEW EMPLOYER'S products to the County government.

FACTS PRESENTED

ACCORDING TO THE EMPLOYEE'S WRITTEN REQUEST, HIS PROSPECTIVE AFTER-COUNTY EMPLOYER IS A NEWLY CREATED COMPANY THAT IS HELD BY AN EXISTING COMPANY WHICH IS OWNED BY A RELATIVE OF THE EMPLOYEE AND CURRENTLY HAS A CONTRACT WITH THE COUNTY THAT IS ADMINISTERED BY THE EMPLOYEE'S DEPARTMENT. THE EMPLOYEE REPRESENTS THAT HE HAS NOT, AS A COUNTY EMPLOYEE, HAD ANYTHING TO DO WITH THE CONTRACT OR THE EXISTING COMPANY. INDEED, ACCORDING TO HIS STATEMENT, HE HAS BEEN DILIGENT IN DISCLOSING HIS POTENTIAL CONFLICT AND AVOIDING EVEN THE APPEARANCE OF IMPROPRIETY. THE EMPLOYEE'S DEPARTMENT HEAD CONFIRMS THESE REPRESENTATIONS.

APPLICABLE LAW

Sec. 19A-13 places the following restrictions on the employment of former public employees:

- (a) A former public employee must not accept employment or assist any party, other than a County agency, in a case, contract, or specific matter for 10 years after the last date the employee significantly participated in the matter as a public employee.
- (b) For one year after effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee:
 - (1) significantly participated in regulating the person or business; or
 - (2) had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).

- (c) Significantly participation means direct administrative or operating authority to approve, disapprove, or otherwise decide government action with respect to a specific matter, whether the authority is intermediate or final, exercisable alone or with others, and exercised personally or through subordinates. It ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.

§19A-7 © authorizes the Commission, after receiving a written request to waive the prohibitions of Section 19A-13 if it finds that:

- (1) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employee; or
- (2) the proposed employment is not likely to create an actual conflict of interest.¹

CONCLUSION

[As indicated by the evidence] THE FACTS presented by the employee and the employee's department HEAD [director,] ESTABLISH THAT the employee has neither significantly participated in regulating the CURRENT contractor nor had official responsibility concerning ITS CONTRACT WITH THE COUNTY [a contract with the contractor]. OBVIOUSLY, [T] the new company has never done business with or been regulated by the County.

The employee's post-county employment by the new company is not currently prohibited by §19A-13(a) and would never implicate §19A-13(b). However, the future business between either the new company or the contractor and Montgomery County might implicate §19A-13(a). For example, if either company should become interested in seeking to do business with Montgomery County in connection with a specific matter in which the employee significantly participated as a public employee, the employee would not be able to assist the company on that matter for 10 years after the last date the employee significantly participated in the matter as a public employee.

Therefore, although there currently is no [basis] NEED for a wavier of §19A-13(a), the employee is advised of the continuing application of the provision, and, should such circumstances arise, that he would have to refrain from assisting the company in such matters or apply for and obtain a waiver of that prohibition. Additionally, the employee is reminded of §19A-15(a)'s continuing prohibition of the disclosure of confidential information:

Except when authorized by law, a public employee or former public employee must not disclose confidential information relating to or maintained by a County agency

¹ Subsection (e) permits the Commission to impose appropriate conditions to fulfill the purposes of this Chapter with it grants a waiver.

that is not available to the public. A public employee or former public employee must not use confidential information for personal gain or the gain of another.

WALTER A. SCHEIBER, CHAIR